

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
State Bar No. 141461  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
5 Telephone: (415) 703-1404  
Facsimile: (415) 703-5480  
6 *Attorneys for Complainant*

7 **BEFORE THE**  
8 **BOARD OF BEHAVIORAL SCIENCES**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. MF-2010-27

11 **MICHAEL JOHN RUBINO, III**  
12 **101 Gregory Ln., #33**  
**Pleasant Hill, CA 94523**

**A C C U S A T I O N**

13 **Marriage and Family Therapist License No.**  
14 **MFC 33900**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Kim Madsen (Complainant) brings this Accusation solely in her official capacity as  
19 the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.

20 2. On or about May 15, 1997, the Board of Behavioral Sciences issued Marriage and  
21 Family Therapist License Number MFC 33900 to Michael John Rubino, III (Respondent). The  
22 Marriage and Family Therapist License was in full force and effect at all times relevant to the  
23 charges brought herein and will expire on July 31, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Behavioral Sciences (Board),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code unless otherwise indicated.

28 4. Section 118, subdivision (b), of the Code provides that the expiration of a license

1 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
2 within which the license may be renewed, restored, reissued or reinstated.

### 3 STATUTORY AND REGULATORY PROVISIONS

4 5. Section 651 of the Code states, in pertinent part:

5 (a) It is unlawful for any person licensed under this division or under any initiative act  
6 referred to in this division to disseminate or cause to be disseminated any form of public  
7 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image  
8 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services  
9 or furnishing of products in connection with the professional practice or business for which he or  
10 she is licensed. A "public communication" as used in this section includes, but is not limited to,  
11 communication by means of mail, television, radio, motion picture, newspaper, book, list or  
12 directory of healing arts practitioners, Internet, or other electronic communication.

13 (b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a  
14 statement or claim that does any of the following:

15 (1) Contains a misrepresentation of fact.

16 (2) Is likely to mislead or deceive because of a failure to disclose material facts.

17 (3)(A) Is intended or is likely to create false or unjustified expectations of favorable results,  
18 including the use of any photograph or other image that does not accurately depict the results of  
19 the procedure being advertised or that has been altered in any manner from the image of the  
20 actual subject depicted in the photograph or image.

21 (B) Use of any photograph or other image of a model without clearly stating in a prominent  
22 location in easily readable type the fact that the photograph or image is of a model is a violation  
23 of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient,  
24 who has undergone the procedure being advertised, of the licensee who is advertising for his or  
25 her services.

26 (C) Use of any photograph or other image of an actual patient that depicts or purports to  
27 depict the results of any procedure, or presents "before" and "after" views of a patient, without  
28 specifying in a prominent location in easily readable type size what procedures were performed

1 on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be  
2 comparable in presentation so that the results are not distorted by favorable poses, lighting, or  
3 other features of presentation, and (ii) shall contain a statement that the same "before" and "after"  
4 results may not occur for all patients.

5 (4) Relates to fees, other than a standard consultation fee or a range of fees for specific  
6 types of services, without fully and specifically disclosing all variables and other material factors.

7 (5) Contains other representations or implications that in reasonable probability will cause  
8 an ordinarily prudent person to misunderstand or be deceived.

9 (6) Makes a claim either of professional superiority or of performing services in a superior  
10 manner, unless that claim is relevant to the service being performed and can be substantiated with  
11 objective scientific evidence.

12 (7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed,  
13 published scientific studies.

14 (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive  
15 because of a failure to disclose material facts.

16 ...

17 (e) Any person so licensed may not use any professional card, professional announcement  
18 card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or  
19 a similar professional notice or device if it includes a statement or claim that is false, fraudulent,  
20 misleading, or deceptive within the meaning of subdivision (b).

21 ...

22 (g) Any violation of this section by a person so licensed shall constitute good cause for  
23 revocation or suspension of his or her license or other disciplinary action.

24 (h) Advertising by any person so licensed may include the following:

25 (1) A statement of the name of the practitioner.

26 (2) A statement of addresses and telephone numbers of the offices maintained by the  
27 practitioner.

28 (3) A statement of office hours regularly maintained by the practitioner.

1 (4) A statement of languages, other than English, fluently spoken by the practitioner or a  
2 person in the practitioner's office.

3 (5)(A) A statement that the practitioner is certified by a private or public board or agency or  
4 a statement that the practitioner limits his or her practice to specific fields.

5 . . .

6 6. Section **2902(c)** of the Code states:

7 A person represents himself or herself to be a psychologist when the person holds himself  
8 or herself out to the public by any title or description of services incorporating the words  
9 "psychology," "psychological," "psychologist," "psychology consultation," "psychology  
10 consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy,"  
11 "psychotherapist," "psychoanalysis," or "psychoanalyst," or when the person holds himself or  
12 herself out to be trained, experienced, or an expert in the field of psychology.

13 7. Section **2903** of the Code states:

14 No person may engage in the practice of psychology, or represent himself or herself to be a  
15 psychologist, without a license granted under this chapter, except as otherwise provided in this  
16 chapter. The practice of psychology is defined as rendering or offering to render for a fee to  
17 individuals, groups, organizations or the public any psychological service involving the  
18 application of psychological principles, methods, and procedures of understanding, predicting,  
19 and influencing behavior, such as the principles pertaining to learning, perception, motivation,  
20 emotions, and interpersonal relationships; and the methods and procedures of interviewing,  
21 counseling, psychotherapy, behavior modification, and hypnosis; and of constructing,  
22 administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality  
23 characteristics, emotions, and motivations.

24 The application of these principles and methods includes, but is not restricted to: diagnosis,  
25 prevention, treatment, and amelioration of psychological problems and emotional and mental  
26 disorders of individuals and groups.

27 Psychotherapy within the meaning of this chapter means the use of psychological methods  
28 in a professional relationship to assist a person or persons to acquire greater human effectiveness

1 or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or  
2 socially ineffectual or maladjustive.

3 8. Section 4982 of the Code states, in pertinent part:

4 The board may deny a license or registration or may suspend or revoke the license or  
5 registration of a licensee or registrant if he or she has been guilty of unprofessional conduct.  
6 Unprofessional conduct includes, but is not limited to, the following:

7 ...

8 (f) Misrepresentation as to the type or status of a license or registration held by the person,  
9 or otherwise misrepresenting or permitting misrepresentation of his or her education, professional  
10 qualifications, or professional affiliations to any person or entity.

11 ...

12 (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered  
13 person to engage in conduct for which a license or registration is required under this chapter.

14 ....

15 (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the  
16 qualifications, functions, or duties of a licensee or registrant.

17 ...

18 (p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in  
19 Section 651.

20 ...

## 21 COSTS

22 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
23 administrative law judge to direct a licentiate found to have committed a violation or violations of  
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
25 enforcement of the case.

## 26 FIRST CAUSE FOR DISCIPLINE

27 (Employment of Unlicensed Person)

28 10. Respondent is subject to disciplinary action under Code section 4982(h) in that he

1 aided and abetted, and/or employed, Tajinder Bedi, an unlicensed and unregistered person, to  
2 engage in conduct for which a license or registration is required, as follows:

3 11. From in or about 2005 until in or about November, 2008, in Pittsburg, California,  
4 Respondent employed, and purported to supervise, Tajinder Bedi as a marriage and family  
5 therapist intern. Mr. Bedi was not licensed as a marriage and family therapist intern during this  
6 period.

7 12. The Board learned of the facts set forth in paragraph 11 on or about July 9, 2009,  
8 when these facts were reported in a letter from Contra Costa Health Services.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (False Advertising)

11 13. Respondent is subject to disciplinary action under Code sections 651, subsection (g),  
12 and under Code section 4982, subsection (f), (j) and (p), in that he misrepresented his education,  
13 professional qualifications and/or professional affiliations, which misrepresentation constituted a  
14 dishonest, corrupt or fraudulent act substantially related to the qualifications, functions, or duties  
15 of a licensee, and which misrepresentation was misleading or deceptive, as follows:

16 14. On or about October, 2009, Respondent advertised his services on a website. The  
17 website identified and referred to Respondent as "Dr. Michael Rubino III" and stated that  
18 Respondent was a psychologist. This advertisement was false, fraudulent and misleading in that,  
19 in actuality, Respondent was not licensed as a psychologist and could not legally claim to be one  
20 in his advertisement.

21 15. The Board learned of the facts set forth in paragraph 14 on or about July 9, 2009,  
22 when these facts were reported in a letter from Contra Costa Health Services.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
25 and that following the hearing, the Board of Behavioral Sciences issue a decision:

26 1. Revoking or suspending Marriage and Family Therapist License Number MFC  
27 33900, issued to Michael John Rubino, III;

28 2. Ordering Michael John Rubino, III to pay the Board of Behavioral Sciences the

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
2 Professions Code section 125.3;

3 3. Taking such other and further action as deemed necessary and proper.

4  
5 DATED: July 28, 2011

*Kim Madsen*

KIM MADSEN  
Executive Officer  
Board of Behavioral Sciences  
Department of Consumer Affairs  
State of California  
*Complainant*